

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT L. NELSON,	:	
	:	
Plaintiff,	:	No. 4:CV-02-0725
	:	
vs.	:	Case transferred 04/30/02
	:	
MARTIN F. HORN, et al.,	:	(Judge Muir)
	:	
Defendants	:	(Mag. Judge Blewitt)

ORDER

November 4, 2005

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On April 30, 2002, Plaintiff Robert L. Nelson initiated this matter by filing a civil rights complaint. The Clerk of Court assigned responsibility for this case to us but referred it to United States Magistrate Judge Thomas M. Blewitt for preliminary consideration. On January 29, 2003, we issued an order in which we adopted the Magistrate Judge's recommendation that the case be dismissed. Nelson successfully appealed that order and the case was remanded to us on June 29, 2005. We received the mandate on July 21, 2005. On July 27, 2005, we issued an order remanding the matter to Magistrate Judge Blewitt.

On July 29, 2005, the Magistrate Judge issued an order requiring Nelson to file an amended complaint within 15 days after the date of the order. The order specifically advised Nelson that the Magistrate would recommend the dismissal of this

case for failure to prosecute it if an amended complaint was not filed within the time allowed.

On August 30, 2005, the Magistrate Judge issued a report recommending that this case be dismissed because Nelson failed to file an amended complaint. Magistrate Judge Blewitt notes that the substance of Nelson's claims pertained to his incarceration and after the filing of this case Nelson was released from prison.

The time allowed for the parties to file objections to the Report and Recommendation expired on September 19, 2005, and to this date no objections have been filed.¹ When no objections are filed to the report of a Magistrate Judge, we need only review that report as we in our discretion deem appropriate. *Thomas v. Arn*, 474 U.S. 145, 151-52 (1985).

Federal Rule of Civil Procedure 41(b) provides as follows:

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication on the merits.

Fed. R. Civ. P. 41(b).

Nelson has failed to: 1) respond to the court's order of

¹We further note that, to this date, Nelson has not filed an amended complaint.

July 29, 2005; and 2) respond to the Magistrate Judge's Report and Recommendation. Nelson has not filed any document in this case in over two years.

Based on the circumstances of this case, we agree with Magistrate Judge Blewitt's determination that Nelson has abandoned this case. Dismissal pursuant to Rule 41(b) is appropriate.

We will adopt the Magistrate Judge's recommendation as our own and dismiss this case for Nelson's failure to prosecute it.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Magistrate Judge Blewitt's Report and Recommendation issued on August 30, 2005, is adopted *in toto*.
2. This case is dismissed for Nelson's failure to prosecute it.
3. The Clerk of Court shall close this case.

s/Malcolm Muir
MUIR, U.S. District Judge

MM:ga